[XXXVth YEAR.] THE [No. 1728.]

MARYLAND GAZETTE.

FRIDAY, FEBRUARY 25, 1780.

To the PUBLIC.

UNDER the pretence of neceſſity, the moſt unjuſtifiable actions have been committed; Milton calls it, "*the tyrant's plea.*" That neceſſity has been often pleaded in free, as well as in abſolute governments, to cover injuſtice, no man acquainted with hiſtory can deny. The ſafety of the people, is, no doubt, the ſupreme law; to that law every other conſideration, except the obſervance of the natural, or divine law, muſt give way. When the ſafety of the ſtate is in evident danger, what would otherwiſe be the greateſt hardſhip, or even injuſtice, ceaſes to be ſo; but then this danger muſt be great and imminent, the neceſſity ſpringing out of it muſt be palpable, and felt by every member of the communalty. Is the neceſſity urged by the delegates in ſupport of the confiſcation of Britiſh property of that nature? It ſurely is not, for they themſelves do not conſider it as ſuch, they ſpeak of the ſales of that property rather as a matter of fitneſs, propriety, or convenience, than *abſolute neceſſity*; they ſay, indeed, they cannot raiſe, by taxes, more than 9,000,000 out of the 14,220,000 dollars required by congreſs as the quota of this ſtate for nine months, from the firſt of next February to the end of October. Whether more than 9,000,000 of dollars can be raiſed by *taxes alone* within the time limited, does not become an individual to determine, contrary to the aſſertion of the delegates, who ought to be beſt acquainted with the circumſtances of the people, and conſequently the beſt judges of what they can bear. That many objects of taxation have eſcaped their notice, is certain. The ordinary and marriage licences, and the fines and forfeitures, might, it is conceived, be encreaſed, without over burthening the people, ſo as to produce annually a ſum not much ſhort of £.100,000. Duties might be laid on foreign luxuries and ſuperfluities; theſe would probably be a very productive fund, conſidering the preſent turn for expenſive extravagance; and that they might operate as a diſcouragement to trade, we need not apprehend, the miſchief, perhaps, would not be great, if they ſhould check for a time, a trade which is deemed, by many good judges, to be prejudicial to the United States, in the way it is now carried on. Why could not the public debtors, who have paid off their loan-office bonds, give freſh bonds for the balances that may be juſtly due to the public, after deducting from the original ſums, the payments made in a depreciated currency, and credited according to the prevailing rate of exchange at the times of the reſpective payments? There is due in the year 1773, to the public on bonds 154,000 ſterling; ſuppoſe £.100,000 ſterling that ſum diſcharged in the preſent circulating bills of credit, and reduced by the payments made and credited, as above mentioned, to 80,000 ſterling, add to this ſum the £.54,000 ſuppoſed to be outſtanding, the amount would be £.134,000, the annual intereſt, at 4 per cent. £.5360 ſterling; if the obligors were conſtrained to diſcharge this intereſt at the preſent exchange, what a vaſt ſum would thereby accrue to the public treaſury! Even at £.1500 per cent. exchange it would produce £.80,400 currency. Particular intereſts, indeed, might, and probably would oppoſe this plan, but theſe could not come in competition with the public good, when that may be promoted without the leaſt hardſhip to individuals, or violation of juſtice. If I am rightly informed, when it was debated at the laſt ſeſſion in the houſe of delegates, to make the ſterling quit-rents formerly paid to the once lord proprietary, payable to the ſtate, a member of that houſe contended for *the propriety* of their being diſcharged at a higher rate of exchange than 166⅔ per cent. If ſuch an advance on the exchange ſettled by law was eſteemed juſt, in his opinion, and in reality would have been juſt, in the caſe of the quit-rents, (ſuppoſing them made a public revenue) that gentleman, certainly, could not conſiſtently oppoſe an advance on the above ſterling intereſt, due and payable to the ſtate, nor do I conceive the houſe could oppoſe it on any rational principles. The marriage and ordinary licences, the duties on foreign luxuries, the fines and forfeitures, the intereſt accruing and paid, in the manner above mentioned, on loan-office bonds, would altogether produce an income, it is apprehended, more than equal to the expence of our civil government, and in that caſe the whole of the net revenue ariſing from the aſſeſſments on real and perſonal property within the ſtate, might be applied to the payment of our quota of the continental charges and demands. The delegates ſay, the 14,220,000 dollars required of this ſtate, cannot be raiſed by taxes, without compelling the people to ſell a part of their property; they admit then, that by ſelling ſome part of their property, the whole ſum may be raiſed, but contend it is unreaſonable to compel the people to part with their own, when there is property in our power belonging to our enemies, and which ſhould be ſold firſt. But then the queſtion recurs, may not this way of proceeding, to avoid a temporary evil, ſuppoſing it juſtifiable by the law of nations, our municipal law, and the principles of our conſtitution, plunge our people into greater difficulties and diſtreſs hereafter? I think I have adduced very good reaſons in ſupport of the probability, at leaſt, of this opinion. Admitting we cannot raiſe by taxes the 14,220,000, does it follow, or would the congreſs require, that this ſtate ſhould break through its declaration of rights, and violate the law of nations and our common law, in order to levy that ſum? Taxation alone will not enable us to carry on the war; other reſources muſt ſupply the deficiency of taxes; ſome of thoſe reſources have been pointed out. This ſtate is equally entitled with any other ſtate in the union to a ſhare of the back lands; the want of money, and the little probability that four or five ſtates claiming thoſe lands excluſively of the reſt, will reap any conſiderable advantage from their conteſted claim, as matters are now circumſtanced, may procure for this ſtate, that redreſs which it hath not been able yet to obtain from policy or juſtice. It is to little purpoſe to wreck our invention in finding out ways and means for filling the public treaſury, if the utmoſt attention be not paid to proper ſavings in every department; without the ſtricteſt obſervance of the moſt rigid œconomy, the public treaſury will reſemble the tub of the Danaidæ, and the monies collected from the ſweat and labour of the people, will flow out as faſt as they are poured into it; nay, the public revenue will be conſtantly anticipated, even ſhould the people be taxed to the very extent of what they can pay, after uſing the utmoſt induſtry and frugality; to tax up to that pitch would not be good policy, and to go a ſingle iota beyond it would be unjuſt, and indeed impracticable. The legiſlature ſhould ſet the example to others, and in theſe times of difficulty and extraordinary expenditures, endeavour to render their fittings as little burthenſome as poſſible to the people. The buſineſs of the laſt ſeſſion, which coſt near £.60,000, might have been tranſacted in half the time, and conſequently one half the expence ſaved. Why the ſeſſion was unneceſſarily protracted from the beginning of November to the end of December, the people have a right to know, and they would do well to enquire. The neceſſity urged by the delegates for the *immediate* ſale of part of the Britiſh property intended to have been confiſcated, aroſe, as they ſtate it, from the requiſition of congreſs to make the firſt payment on our quota by the firſt of February, and the ſhortneſs of time from the latter end of December to that day to make new aſſeſſments, and to give ſufficient opportunity and notice to the people to prepare for the payment of their taxes; had the aſſeſſment bill been paſſed early in the ſeſſion, and the fate of the confiſcation bill previouſly decided, theſe ſtumbling blocks would not have lain in the way. The ſenate *complaiſantly* remark, that they cannot ſuppoſe the alleged neceſſity was created on purpoſe to enforce the paſſage of the bill; to preſerve harmony, if poſſible, between the two branches of the legiſlature, ſo conducive to the judicious management and diſpatch of the public buſineſs, is both prudent and neceſſary, and probably induced the ſenate to put the moſt favourable conſtruction on that delay. Individuals out of doors are not tied up to the ſame rules of order and decorum, they may plainly ſpeak out their ſentiments. But it is not my wiſh or intention to excite the reſentment of the public againſt any man, or ſet of men, were it even in my power; a cautious diſtruſt however may be neceſſary; too much ſuſpicion, and lightly entertained, has frequently occaſioned, in free governments, turbulent and noxious factions, and too little may degenerate into ſuch a confidence in the repreſentatives, as to be abuſed. The extremes between an anxious and fretting jealouſy, and a blind and implicit confidence, ſhould be avoided; a free and diſcerning people, if they mean to remain free, will endeavour to preſerve a middle conduct between thoſe extremes; if they act prudently, they will not rely on mere and plauſible profeſſions, but they will ſearch narrowly into the true and ſecret ſprings of the public councils, and not always content themſelves with the oſtenſible and aſſigned motives for the conduct of their repreſentatives. The good ſenſe of our people, particular circumſtances and particular characters, will generally furniſh them with a clue to lead them through all the windings to the main and innermoſt ſpring of public meaſures. The delegates endeavour to caſt the blame on the ſenate for not raiſing the whole ſum demanded by congreſs; the reaſons aſſigned by the ſenate in their meſſage for not paſſing the bill for the confiſcation of Britiſh property, and what has been ſuggeſted in the courſe of the preſent enquiry, will enable the public to form a pretty good judgment of the rectitude and policy of the motives which induced one branch of the legiſlature to urge, under all the enumerated diſadvantages, the paſſage of the bill, and the other to reject it. The writer has no intereſt diſtinct from that of his country, the proſperity of which he has always endeavoured to promote to the beſt of his power and abilities, and wiſhes to ſee eſtabliſhed, on the ſureſt foundations, the principles of liberty, of juſtice, and of our conſtitution.

Jan. 29, 1780. A SENATOR.

For the MARYLAND GAZETTE.

THERE is no way more effectual to diſgrace an opinion, than by ſeeming to advance arguments in favour of it, while at the ſame time, theſe arguments are of ſuch a nature that all muſt perceive the author means very differently from what he ſays. This by the ſchools, is called irony, and is aptly made uſe of on great occaſions*, when, perhaps, ſober reaſoning or bold invective would have been leſs ſafe, or leſs proper to prevail on the minds of men out of temper with the debate. This way of writing the gentleman has uſed who perſonates a ſenator†; ſeeming to appear againſt the confiſcation bill, he has advanced many reaſonings, and has preſſed them with ſo much ſolemnity, that, abſolutely, ſome perſons have begun to believe that he might be ſerious. But if we take a view of the whole as they come together, we muſt ſee, that no man who appears to have read ſeveral books, and is capable of putting words together with exactneſs, could ſeriouſly propoſe theſe things on the ſubject.

He begins with obſerving, that "the juſtice of the meaſure" depends "on the knowledge of the true objects" of it. We know that it depends not on "the objects" but on the principle. A law or the execution of it becomes juſt when it is founded in reaſon, let it offend in its operation whom it may. It is the characteriſtic of the Moſt High himſelf, "that his ways are without reſpect of perſons."

An apprehenſion is expreſſed, that the confiſcation of the property of "Britiſh ſubjects" may violate the "conſtitution and bill of rights" of this ſtate. This is not poſſible, inaſmuch as "our conſtitution," including the bill of rights, is a boundary line to the citizens of the ſtate, in the mode of government, and in the enacting of all laws which relate to themſelves. But how ſhall a law which reſpects not the citizens of this ſtate, violate their rights? It would be equally true in mathematics, that the contact of two circles ſhall deſtroy the radii of one.

It is made a queſtion, "Can theſe Britiſh ſubjects, *ſuppoſed aliens*, be aſcertained by the law

* ——— *Ridiculum acri*
Melius; ac fortius magnas plerunque ſecat res.

† *Theſe obſervations reſpect the firſt publication of the Senator.*

of nations? If so, what necessity is there for a positive law to ascertain them?" The law of nations is the law of reason applied to states, and it remains with the reason of each particular state to say what is law. This it can say in no other manner than by its declarations of its public acts. The bill in question is a declaration, and the measure will be a public act of the body politic. It respects "aliens," and is a sentence according to the law of nations, and not the enacting of a new law. It is necessary that commissioners be appointed to dispose of the estates of the condemned, and, in the mean time, that they have a warrant, of which nature is this bill. It is in vain to say, that these men ought to have a trial by jury, and before the judges, for they are not of any vicinage in this country, nor within the jurisdiction of the judges.

The Senator (for as he takes upon himself that title, we shall consider him as such) boldly avers, that the declaration of the British king and parliament could not convert the lawful and justifiable resistance of these colonies into rebellion. "The very supposition of a whole country being in rebellion is a monstrous absurdity." This I take to be a pleasant satire on all those who assert with much seeming earnestness what is self-evident. The declaration of the British court and parliament could not change the nature of our resistance, and make it rebellion, but it could give us to see that they considered it as such, and when it should be in their power, they were disposed to punish it accordingly. It is indeed absurd to suppose, that "a whole state can be in rebellion; for rebellion is the opposition of a part to the supreme authority; and unless the whole can take up arms against itself, the whole cannot be in rebellion." This proves not any thing that I know of; but the argument deduced from it, is, that as it would be wrong in the court of Britain to treat us as rebels, so it would be wrong in us to treat the British nation as tyrants. For though some of them may be tyrannical enough in their conduct, yet there are others of them who have good intentions, and are "unoffending members." The authority of Rutherforth is adduced as making this distinction. He observes under head "Thirdly," which the delegates omitted, "That though an injury which is done by a nation is communicated to all the members of it, as far as this injury produces an obligation to repair damages, yet the guilt of it, as it implies a disposition to do harm, is confined to the collective person of the nation, and to those particular members of it, who have made it their own act by their immediate and direct consent." Nothing is more true; for though the property of every individual of the nation, even women and children,* is answerable for the damages and expences of the war, and may be applied, for that purpose, whenever it shall be in the power of the injured state, yet, as to what may be imposed by the victors, as a punishment, it shall be levied on the collective body of the nation, or the property of the criminal members shall be confiscated on that account. It will be time enough for us to make this distinction in our treatment, of "criminal or unoffending members" of the British nation, when full reparation shall have been made for damages sustained, and for the expences of the war. Until that shall have been done, we have, by the words of Rutherforth, an undoubted right to take the property of British subjects, under whatever predicament the owners are to be considered.

The Senator, quoting Rutherforth, who speaks of the property of goods that are not to pass until the conclusion of the war, thinks he cannot mean "such goods only taken from the enemy, as may exceed the damages sustained by the injured party." But Rutherforth himself, towards the conclusion of what he says under head "Thirdly," expressly tells us, that he does mean such goods. His words are, "I have here spoken of the property of all goods which are taken in war, as ultimately transferred by consent in treaties of peace, without having any regard to what is taken for damages, or for current expences." It then follows, that the author has not discovered due complaisance to Rutherforth, in affirming "the supposition to be inadmissible in fact, of course idle in theory, that the value of goods taken from the enemy may exceed the damages and expences of the war incurred by the nation taking them, and consequently amount to more than an equivalent for such damages and expences." But it must either have been, that in reading the book, he has turned over two leaves at once, as a man may very innocently do, and so missed the passage; or that through the whole of this essay, he is ironical, and having it in view to ridicule gross mistakes, he has given us one on purpose.

If it should be said, that we cannot convert the property of the enemy to our own use, until the conclusion of the war, not being able before that time to tell what are the damages and expences of it, and so be in danger of taking more than we ought to take; the author very justly obviates this objection by observing, that "in modern wars, this is never the case; to write, therefore, and reason upon a thing which never does happen, is an unprofitable waste of time and paper, to say the least of it."

"All the cases adduced from Rutherforth, and his reasoning on them, *seem* to apply solely to goods forcibly taken from the enemy on the high seas, or during inroads made into their territory, &c." The cases and the reasoning may *seem* to apply, but it is certain that they do not apply. To me indeed they do not *seem* to apply. But were it even so, surely no man can seriously mean to support an argument by the reasoning of an author, which may only "*seem* to apply."

What Rutherforth only *seemed* to say, Vattell, in the opinion of the Senator, speaks fully out, for he talks of "lands possessed by *foreigners* in an enemy's country." But as by foreigners he means "neutral strangers," such as the Dutch or the Danes are to us, it does not even "*seem* to apply" to British subjects. Vattell proceeds, and observes, that "he who declares war does not confiscate the immoveable goods possessed in his country by his enemy's subjects; *permitting them to purchase and possess these goods, he has in this respect, admitted them into the number of his subjects*; but the income may be sequestered, &c." The intermediate sentence of this paragraph, which the gentleman judiciously omitted, explains the matter, shewing us, that this indulgence extends to those of the enemy's subjects who continue to reside in the country, and concerning whom there can be a presumption, that they are subjects. But, as to those who have departed, and mixed with their friends in the territory of the enemy, there is no such indulgence granted, because no such presumption can be formed.

"The quotation," therefore, "from Vattell discovers" nothing to the purpose; nevertheless, the Senator goes on to observe, that "to judge from the passage cited from Vattell, there does not appear to be any treaty, by which the above described property is secured to individuals among the several nations of Europe; such individuals owe the preservation of such property to the *usage* and *custom* merely of these nations, and not to any particular or special treaty." "Usage, or custom," is that which gradually and insensibly takes place between nations by *mutual consent*; And indeed this more than "special treaty," is the rule of conduct, to all nations in their treatment of each other. It is known that every outrage shall be retributed, and it becomes the general interest, and hence the general practice of nations to soften their conduct to each other. But where a nation departs from this humanity, and, instead of making war like men, makes war like devils, it becomes necessary to turn the law of nations, which is the law of reason, in its full rigour on them, to bring them back, if possible, to a more civilized practice. Nothing but the experience of a similar treatment to that which has been given and intended, can effect this. It may be well enough in common life, to talk of mild treatment to honest men who are our neighbours, and whose "*custom*" or practice it is to adjust, with as little bitterness as possible, the differences that, from the nature of their affairs, will unavoidably arise between them; but to hold out the like treatment to robbers, murderers, and cut-throats, would be the readiest way to encourage them, and to fill the earth with blood-shed. If the conduct and intention of the British nation, as evinced by their declaration, ought to be the measure of our conduct to them, which is certainly the case, there will be nothing more just, than what, according to "Rutherford," is warranted by "the law of nature," to make slaves of those who shall fall into our hands, "by way of reparation for damages," if their property suffice not for this purpose. Nay, as their practice has been to starve our prisoners, to murder in cold blood, &c. and as by their law, which they have "declared" shall be executed on us, as far as they shall have it in their power, we are liable to lose, not only our property, but our lives also, it would be justifiable in us to retaliate, by putting to death the more criminal amongst them, that is, "in the present cause," the tyrant himself, and those, "for instance," who "by approving and engaging in the war, in addresses to the crown, by voting for it in parliament, or by carrying it on in person, have made the guilt properly their own." If we do not execute justice to this extent, with regard to any of them who shall fall within our power, it will be owing to our clemency, not to their desert. Nor would even then the scenes of Marius and Sylla be renewed, for these men proscribed and shed the blood of their fellow citizens, over whose liberties they had trampled, but we should imitate only what was done by Harmodius and Aristogiton, by whom the tyrant Pisistratus, and those whom he had around him were put to death, and to whose memory, statues were erected at Athens.

It is made a question, "what British subjects are to be deemed, *upon legal principles*, aliens in this state? The answer is, that, on the principles of common sense, all British subjects are aliens. As to their being in "this state," that is another point. It is to be dreaded that there are too many amongst us who consider themselves as British subjects, writing and speaking on all occasions to assist the falling cause of their brethren.

It is again asked, amongst other things, "is the acceptance of a pension from the king of Great Britain, &c. to render the pensioners *British subjects, and alien enemies?* If so they would be punished for the want of foresight." I think so, inasmuch as it has been the ground of their conduct; for could they have *foreseen* that the arms of the states would prevail, it is probable, that instead of offering their services to the king of Great Britain, they would have offered them to the congress, and if they had not drawn pay in the mean time, yet they would have saved their lands, which perhaps would have been much better. As to "the not coming into this, or some one of the United States, before a particular day, &c." that "particular day" is, according to the law of reason, the first day of the war. For as no one, consistent with his obligations to the society of which he is a member, can remain an inactive spectator when it is engaged in war, so the first hostilities commenced against his country, is a signal for him to return. If he shall be absent after this time, and afterwards appear, it will remain, not with the judges, but with the supreme authority of the state, to admit or reject his apology. As to those who have withdrawn after the commencement of the war, without the consent of the public body, they are considered as no longer members*, but, by the law of reason, have forfeited their property, having violated that condition on which they originally held it, which was the mutual defence and preservation of the commonwealth. Vattell calls them "infamous deserters which the state has a right to punish severely."† There is therefore no necessity for a law declaring such departure unlawful," for it is originally understood to be so, and the very constitution of society explains it. Should any act of the body politic announce this, it would be no "retrospective" law, but, a fresh promulgation of what had been law, and a bill to dispose of their effects, if they had left any, operating as we have said before, in the nature of a warrant, to commissioners appointed for that purpose. If any subsisting law of this state has held out to such, that on returning before a certain day they shall enjoy their possessions, it is unjust to ourselves, and though it cannot be prevented that those who have returned may take the benefit of it, yet it behooves that it be repealed as soon as possible. The bill in question being an act of as high authority as that by which the law was constituted, will be a virtual repeal of it. It indeed ought to be repealed, and we have a right, not only to take away the property of these "absentees" of whom the Senator speaks, but if at any time hereafter they shall come within our power, to "punish them as deserters."‖ Nor will this be thought hard, if we consider, that the angel of God himself enjoining the Hebrews to curse the family of "Meroz" who were absent in the contest; and some years afterwards, amongst the same nation, in the civil war with the tribe of Benjamin, the whole canton of Jabesh Gilead was put to the sword "because they came not to the battle."

The Senator supposes, that to confiscate the property of "absentees," who merely resided in the enemy's country during this contest, "is not consonant to the principles, either of natural or common law." We have shewn that it is "consonant to the principles of natural law," and all who know that the feudal system, which is the ground of the common law, made the oath of fealty and service in war, peculiarly above all others, the condition of holding landed property, will not doubt that the common law, above all others, enjoins this service, and if any one shall chuse to understand this beyond a doubt, he shall refer him to lord Hardwick on fines and forfeitures. As to the trial of these men, how shall we try them, when no writ of exigent can lay hold upon them? How shall we proceed against them as subjects, when they are no lon-

* *Vattell, L. I. c.* 19, 97.

* *Grot. L. II. C. X.* 2. *Ruther.* 35. 2 *Barl.* 22.
† *Vattell* L. I. C. 19, § 220.
‖ *Vattel, ibidem.*

ger members of the state? The Senator indeed undertakes to prove, that all "British subjects" are American subjects, and all American subjects are British subjects. It is difficult to conceive how two things can be one, and for my part I should think it as improbable as the declaration of the man who proposed to swallow himself. But let us hear the evidence adduced on the subject. It is proved by a Ventries 6, "that though an act of parliament may do any thing, that must be understood as to civil things, &c. but natural things are not within its power; for an act of parliament* cannot make a man to be born in any other place than that where he really was born; and (here follows the deduction of the Senator) consequently, cannot make a man, cease to be a natural born subject who is really one; but a natural born subject cannot be an alien, therefore an act of assembly cannot make an alient" Now to convert the syllogism; an act of naturalization can give a man a civil birth, that is, can make him, in all civil respects, a natural born subject. An act of banishment can give a man a civil death, that is, can cause him to cease to be a subject.† He that is not a subject, is an alien; therefore, an act of assembly can make a man an alien.‖ But these men by departing from the state, have given themselves a civil death, and are become aliens.

He "ventures to pronounce" that the subjects of a state, are the subjects of that state; for, "while the duchies of Guienne, &c. were under actual obedience to the kings of England, persons born within those duchies could inherit within the realm of England." This is probable enough; and though the Senator has "but little knowledge of the law," it was no matter, for "but little" was required to find this out. If lord Coke had discovered nothing more in his writings, he could never have been called "a great lawyer!" As to Calvin's case, it is the expression of Hume, that king James "engaged the judges" to make the determination; and it might be well enough for both Englishmen and Scotsmen, while under one crown; but when disunited under different sovereigns, should that case have happened, during the lives of any of the postnati, it would have puzzled that prince, notwithstanding this adjudication, to have made them "inheritable to each other." Caligula made his horse a Senator; but by the mere force of an edict, could he give him capacity for that office? The first Solomon, according to Josephus, possessed a knowledge of the art magic; and this second Solomon, as he was called, according to the Senator, must have had an art not less wonderful, if, by an adjudication of his judges, he could have reconciled the jarring nature of the thing, and have made a Scotsman an English subject, even after he had ceased to owe obedience to a sovereign of that kingdom. But I do not see what good end it would answer if it could be proved, that all British subjects are American subjects, and all American subjects British subjects; for although they might "inherit§" to each other, yet they might be also hanged by each other as traitors to their respective governments; the subjects of England for not acknowledging the authority of the states, and the subjects of the states for not acknowledging the king of England as their rightful sovereign. The Americans, however, I am persuaded, now that they have declared independence, have no inclination to be proved British subjects.

The Senator "*believes*, that no confiscation of British property, *as such*, has taken place in any of these states." The patriarch Abraham *believed* against *hope*, but this gentleman does more, he *believes* against *fact*.

I have gone through this performance, taking up the main joints of the argument,

* *It would startle the Senator if he was to read in 4 Bac. 639, that an act of parliament can "enable a man to have an heir," i. e. to beget one, I suppose, "or can make a woman a man" i. e. "a lord mayor or a justice of peace,"*

† *After having driven him out, it can have no authority over him. Fat. L. I. C. XIX. 97. An act of parliament can discharge a person from the allegiance he lives under, and refers him to a state of nature. 4 Ba. 639.*

‖ *The fallacy of the Senator's reasoning consists in his using the terms in one proposition in a natural sense, and in the other in a civil sense, whereas both ought to be used in a natural, or both in a civil sense.*

§ *It must exceed the faith of a common christian to believe, that enemies, as the Americans and British are, can "inherit within the countries of each other," when if they should come into these countries, except with a flag, they must be hanged up at sight, or knocked on the head as robbers; or, that they should be capable of suing in a court of justice, which must derive its authority from a state or sovereign whose authority they disown.*

have examined them, and am convinced, that the gentleman can by no means be serious. I take the whole to be a burlesque of the reasonings that are usually urged in conversation, and especially among the disaffected, against the confiscation bill; and tho' I like it well enough in that respect, yet I cannot say that I am so well pleased to see it put in the mouth of a Senator; for that any of that body could have talked in this wild manner is impossible; and if the common people could be brought to think so, it would affect the reputation of the whole, and take away from the popularity of that branch of the constitution, which, as I esteem it valuable, I should be willing to see held in veneration.

Balt. Town, Feb. 19. PUBLICOLA.

For the MARYLAND GAZETTE.

THE more I reflect on the proposition, by the delegates, to confiscate British property, the better I am satisfied of the injustice of the measure. At the first view it appeared plausible, beneficial and necessary. The general opinion ran in favour of the seizure. Governed by our passions, and warm with resentment against the nation of Great-Britain, for the miseries we have suffered in the war, we readily agreed to retaliate on the whole nation, without examining carefully into the principles of our conduct, or reflecting on its consequences. Revenge was sweet, and we sought, that not only many innocent people, but some of our warmest friends and advocates, would be distressed or ruined by a general confiscation.

It is one of the first duties of every nation, to conduct itself agreeable to justice. Its happiness, prosperity, repose and honour, require a strict observance of this cardinal virtue. Republics, above all other forms of government, should be assiduously attentive to act agreeable to its dictates. Arguments of policy, reasons of state, supposed cases of necessity, should never induce a departure from the principles of universal justice; whatever is in itself repugnant to the rules of morality, can never be politically right. If a state should act unjustly, what confidence will any nation place in its promises or contracts? How can a society, who hath been guilty of a breach of faith, justice and honour, expect from its citizens an observance of those duties?

It must be admitted, that a confiscation of the property in this state, belonging to British subjects, without any distinction, would injure hundreds of innocent people. Is it consistent with justice or generosity to wreak our vengeance on them, because the king, the ministry, and the parliament of Great-Britain, have waged an unjust war against us? They were neither principals nor accessaries to the injustice of their rulers. They never consented to the war; and many of them openly opposed it, from its commencement to this present moment. Shall the virtuous efforts of our friends be rewarded with robbing them of their property? Justice and honour forbid it, and the feelings of humanity are hurt by the attempt. When the British parliament, for the destruction of some tea belonging to the East-India company, in Boston, suspended the trade of that city, and thereby reduced thousands of the inhabitants to distress and want, the first congress exclaimed against the injustice, the inhumanity of their conduct, and called upon the nation "to justify the imbruing the innocent in one common punishment with the guilty, and for the act of thirty or forty, to bring poverty, distress and calamity, on thirty thousand souls, and those not their enemies, but their friends." If for this indiscriminate revenge, congress declared, "that justice and humanity ought no longer to be the boast of the British nation," let us take care that such conduct be not imputed to us. The cases are similar, and the observation will be retorted upon us, if we punish the innocent subjects of Britain for the criminal conduct of the rulers of that nation.

Whether the confiscation of *private* British property, is supported by the laws and practice of the civilised nations of Europe, I cannot pretend to determine. I would by no means have our infant republic imitate the piratical states of Barbary; and I wish the advocates for the seizure would answer the proper and pertinent question, whether they would wish to adopt the example of the polite and polished nations of Europe, rather than that of the robbers and pirates of Africa: Mahometans in religion, and barbarians in conduct.

The house of delegates ground the confiscation of *private* British property in this state, on this principle, and on this reason alone, that *all British subjects* are, at this time, *alien enemies*, and as *such*, not capable of holding any property within the state: I am ignorant whether the law of nations lays down any rule or criterion, by which a nation can judge what persons are to be considered as aliens to it. I should conceive all those who are not members, citizens, or subjects of a nation, republic or kingdom, as aliens or foreigners; that is, belonging to another nation or people. I should think every civil society or state ought to be considered as a moral person, and all the members of it as its subjects. If the law of nations does lay down a rule, by which to distinguish the one from the other, yet laws applicable to independent nations, can never be received as a rule to us. Our case is very singular and of the first impression, and nothing similar may have ever happened before in the world, or ever received the decision of any of the learned Civilians, cited by the house of delegates. The people of Great-Britain and the colonies (now United States) were, before the declaration of independence, one people, born under the same allegiance, due to, and the same sovereign, and no law of nations can lay down any criterion, by which, in revolutions similar to the present, the subjects of the *new*, can be distinguished from those of the *old* government. It is probable every nation may have adopted [illegible] or rule for itself, to ascertain what persons shall be deemed its citizens or subjects, and what persons shall be considered as aliens or foreigners. The constitution of England may differ from that of France, and that of Spain from both. It seems to me, that children should naturally follow the condition of their fathers, and succeed to their rights, and that the place of their birth should make no difference; but I have understood that children of aliens, born in England, are generally speaking, esteemed natural born subjects of that kingdom, and entitled to all the privileges of such; but in France, the child born of foreign parents is considered as an alien. In many countries a person is not deemed a citizen, unless born of a father who is a citizen, and if one is born in the state of a stranger, or alien, it will only be the place of his birth, and not his country. From hence it is evident, that a different rule is adopted by different nations, to ascertain their subjects or citizens. In England, the circumstance alone of being born there, natural or the children of an alien, or foreigner, in almost other countries, it is otherwise. I cannot therefore see, how we can take the law of nations for our guide; indeed there does not appear to me to be any law of nations on the subject. Every nation has its own law, and many do, and each has a right to differ from the other. I therefore agree with the senator, to take the common law of England (to which our bill of rights declares we are entitled) to discover who are to be considered as aliens to this state. If the question is to be determined by the law of nations, who is to declare what that law is, our legislature or our judges? The two branches differ widely in opinion, and our judges may be as much puzzled as our legislators. If the question is left to our judges, who are well acquainted with the common law of England, they will be under no difficulty to declare who are to be considered citizens or subjects of, or aliens to, this state. By the common law of England, every person born within the dominions of the crown of Great-Britain, or in other words, within the allegiance of the king of Great-Britain, is a natural born subject, and natural allegiance is due to the king of Great-Britain from all persons born within any of his dominions, immediately upon their birth, and this allegiance is perpetual, universal, and unalienable. By the common law of England, an alien is one who is born out of the dominions or allegiance of the king of Great-Britain, and under the allegiance of some other prince or state, and the children of Charles II. born in foreign countries, were naturalised by act of parliament. It was a maxim of the common law, that every man owes natural allegiance where he is born, but this general principle was altered by statutes, by which all children born out of the king's allegiance, whose *fathers were* natural born subjects, were declared to be natural born subjects themselves. By the law of England, the king, by his letters patent, may make an alien born, an English subject, and after such denization, he may take land by purchase or devise, but he cannot inherit. An alien born may be naturalised by act of parliament, and then he will be entitled to all the privileges of a natural born subject, except to be a member of parliament, or of the privy council, &c. &c. The subjects of Great-Britain therefore, may be distinguished under three heads. 1. Natural-born subjects. 2. Aliens made subjects by the king's letters patent. 3. Aliens created subjects by acts of parliament. From these principles it follows indubitably, that every person born within the dominions of the crown of Great-Britain, cannot be aliens to that nation; and the inference drawn by the Senator is conclusive, that all persons born before the declaration of independence, within the colonies, *then* part of the British dominions, but *now* U-

nited States, cannot be considered as *aliens* to Great-Britain; and his conclusion is equally just, that "they are *still* entitled to inherit lands in Great-Britain, as its natural born subjects, and may sue in its courts to recover their debts or *lands*, if withheld from them." The reasons collected by the Senator from Calvin's case, are satisfactory to me. 1. Americans born before the declaration of independence, were, in the judgment of the law of England, natural born subjects of Great-Britain at the time of their birth, and they cannot become *aliens* by any matter *ex post facto*, as the descent of the crown to different persons, or a division of the empire, by the declaration of independence, and our becoming a separate and independent state. 2. Once a natural born subject of Great-Britain, always such subject, and no declaration of independence, no act of the legislature of this state, can make its inhabitants, born *before* the declaration of independence, *aliens* to Great-Britain, or subjects of this state; they must remain natural born subjects to Great-Britain, and not aliens, for their lives, "for it is a principle of universal law, that the natural born subjects of one prince, cannot, by any act of his own, no, not by swearing allegiance to another, put off or discharge his natural allegiance to the former; for this natural allegiance was intrinsic and primitive, and antecedent to the other; and cannot be divested without the concurrent act of that prince to whom it was first due." 3. Americans born before July 4, 1776, must still, in the judgment of the law of England, be considered as subjects of Great-Britain, or they cannot inherit lands *there*, because upon the principle of natural or civil policy, aliens cannot inherit lands in that kingdom. They must still, in the judgment of the law, be considered as subjects, or as *alien friends*, or they cannot prosecute suits in its courts of law or equity. Upon the same principles, every person born in Great-Britain, before the declaration of independence, is entitled to hold and inherit lands in any of the United States. They cannot be considered as members or subjects of this state, because, in that case, they must, by the law of England, be adjudged aliens. But being natural born subjects of Great-Britain, they may inherit lands here, and no act of our assembly can "make them cease to be natural born subjects, or divest them of that natural, inherent and indelible character." As for those persons who were born *since* the declaration of independence, in any of the United States, they are, by that solemn act, made not only aliens to the individual subjects of Great-Britain, but to the nation; yet I should hope some mode will be found out to enable the children to inherit the lands of their parents in the respective countries. If the children of persons born before the declaration of independence could also inherit within the several countries, it would be very desirable, and might be a great means of restoring our former happy connection; but the Senator asserts, "*all* born in any part of the dominions, under the actual obedience of the British king, and *all* born in any of these United States, since the declaration of independence, are *aliens* in the respective nations; the former are aliens in these states, the latter aliens in the British dominions." The difference, I understand, from the Senator, to be this; the declaration of independence operated only on the persons born in these states after that event, it made them *aliens* as to Great-Britain, but it had no effect on their parents, because being born before that event, they could not become aliens to Great-Britain, and this he says is proved on common law principles, and from the greatest law authority. The new generation (infants) born since July 4, 1776, are aliens to Great-Britain, and may be considered as citizens or subjects of the state where born; but their parents are not aliens, but subjects to Great-Britain. I would not be understood to assert, that they are such subjects as owe any allegiance to the king of Great-Britain, but *quasi* subjects, that is a kind of subjects, of such a sort or nature, as to be capable to hold and inherit lands in that kingdom, without owing any allegiance to its king, and to sue not only for debts but lands, if withheld from them. I humbly conceive they must be considered as subjects of some kind, or they cannot inherit, or sue to recover lands, by the laws of Great-Britain. If it should be objected that the children born in the dominions of Great-Britain, or in these states, since the declaration of independence, cannot succeed to their parents lands in the respective nations, I can only answer, that their parents may either repair to their estates and possess them for their lives, or they may sell them, and by that mode secure the value to their issue.

If it should be observed, that the reasons given by the judges, to prove Calvin *not an alien*, and now adduced to prove, "that all British and Americans, born before the declaration of independence, cannot be considered as *aliens*, either in Great-Britain or in this state, and that they may inherit within the several countries, *as the natural born subjects of both*; and that they may sue in the respective courts of either, to recover their debts or *lands* if unjustly withheld from them," did also prove that Calvin was a natural born subject, and will also prove that all Americans born before the declaration of independence, are now, non obstante the declaration of independence, our establishing a new form of government and swearing allegiance to it, subjects of Great-Britain. I can only say, that the case is good law, and applies directly in point to the question.

If it should be objected, that the people or inhabitants of every nation are either citizens or subjects, and aliens or foreigners, and that if the Americans born before the declaration of independence are not aliens, they are subjects, and that by the law of England, every person known to its laws is either deemed a subject or an alien and, that every person must be one or the other, and that no person but a subject can inherit lands in England, and that no one can be *quasi* a subject, that is to inherit lands, but to yield no allegiance, and that the term or appellation *quasi* a subject is new and unknown to the law and constitution of that country; I would observe, that the case under consideration is *new*, and requires distinctions never before necessary, and only proper on the present occasion; and that as it is proper and usual to make use of new terms on the invention of new arts and sciences, so it is justifiable to adopt new terms and designations in the present unparallelled case.

As the delegates justify the confiscation of the property of British subjects on the sole principle that they are aliens, and it is not in their power to make them such, even by an act of assembly, as the Senator has proved from the case in 2 Ventries 6. I hope the subject will not be again revived at the next session of the assembly. Indeed I am apprehensive, consequences not expected by the popular leaders, will happen, if they persevere. Disunion has already taken place in our public councils, and the money required by congress to furnish the current supplies has not been raised; this state has no mode to procure its quota of money but by taxes. If congress is not supplied by the states with cash, they must either stop payment to their army, and the purchase of provisions and other necessaries, or make further emissions. The consequences of either of these events are veay great and to be avoided. If the house of delegates shall still insist on the confiscation of British property, and will not raise the supplies, required by congress, unless the senate assent to the measure, great blame will be imputed to those, who the public shall adjudge to be in the wrong. There is too much good sense in this country to be long deceived. The public vengeance or resentment is too heavy for any individuals.

A PLEBEAN.

Prince-George's county, Feb. 16, 1780.

THE SENATOR having occupied the press, it will be impossible to answer him, until it shall be vacant for that purpose. The public in the mean time will suspend their judgment.

A DELEGATE.

ANNAPOLIS, *February* 25.

By captain John Stewart, in the sloop William, just arrived in Patuxent from St. Eustatius, we are favoured with

The Speech of the Monarch of Great-Britain to the parliament of that nation, on the 25th of November, 1779.

My lords and gentlemen,

I MEET you in parliament at a time when we are called upon, by every principle of duty, and every consideration of interest, to exert our united efforts in the support and defence of our country, attacked by an unjust and unprovoked war, and contending with one of the most dangerous confederacies that ever was formed against the crown and people of Great-Britain.

The designs and attempts of our enemies to invade this kingdom, have, by the blessing of Providence, been hitherto frustrated and disappointed. They still menace us with great armaments and preparations; but we are, I trust, on our part, well prepared to meet every attack, and repel every insult. I know the character of my brave people; the menaces of their enemies, and the approach of danger, have no other effect on their minds, but to animate their courage, and to call forth that national spirit which has so often checked and defeated the projects of ambition and injustice, and enabled the British fleets and armies to protect their own country, to vindicate their own rights, and at the same time to uphold and preserve the liberties of Europe from the restless and encroaching power of the house of Bourbon.

In the midst of my care and solicitude for the safety and welfare of this country, I have not been inattentive to my loyal and faithful kingdom of Ireland. I have, in consequence of your addresses presented to me in the last sessions, ordered such papers to be collected and laid before you, as may assist your deliberations on this important business; and I recommend it to you to consider what further benefits and advantages may be extended to that kingdom, by such regulations and such methods as may most effectually promote the common strength, wealth, and interests of all my dominions.

Gentlemen of the house of commons.

The proper estimates shall in due time be laid before you. I see, with extreme concern, that the necessary establishments of my naval and military forces, and the various services and operations of the ensuing year, must inevitably be attended with great and heavy expences, but I rely on your wisdom and public spirit, for such supplies as the circumstances and exigences of our affairs shall be found to require.

My lords and gentlemen,

I have great satisfaction in renewing the assurances of my entire approbation of the conduct and discipline of the militia, and their steady perseverance in their duty, and I return my cordial thanks to all ranks of my loyal subjects who have stood forth in this arduous conjuncture, and by their zeal, their influence, and their personal service, have given confidence as well as strength to the national defence. Trusting in the Divine Providence, and in the justice of my cause, I am firmly resolved to prosecute the war with vigour, and to make every exertion, in order to compel our enemies to listen to equitable terms of peace and accommodation.

A person who has left his name with the Printer desires to be acquainted with the writer under the signature of A Plebean, as a communication of sentiment may be of advantage to both. Confidential secrecy will be observed.

Office for stating and settling the public accounts,

Annapolis, February 15, 1780.

THE commissioners having desired the law for stating and settling the public accounts to be printed in the Maryland Gazette, think it necessary to give further notice, that they intend to continue setting every day in the state house, Sundays excepted.

And as there appear many large sums due to the public for money advanced upon contracts (and for other purposes) which have been in many instances disregarded, the commissioners take this method to inform all persons concerned, that they are determined to pursue the directions of the legislature, as far as in their power; that they shall require a specific compliance with every public contract, as far as it is possible and equitable, and as they wish to prevent every unnecessary expence and delay, so they hope those who are interested will see the propriety and absolute necessity there is for them to render their accounts, and make satisfaction to the public as speedily as possible. Those clerks of counties who have omitted to transmit lists of ordinary licences and fines, since the year 1775, are requested to forward them; the sheriffs indebted on those or any other accounts to perfect their payments; the supervisors of roads, who have had money advanced from the year 1774; the committees of the counties, and in general all persons who have public money or effects unaccounted for, will be pleased to take notice and comply with the requisitions of the legislature.

Signed per order of the commissioners,

I. PRICE ASSAWAY, clerk.

FOR SALE,

A NEGRO WENCH about thirty years of age; she has been brought up to do either kitchen or plantation work, can spin very well, and is a very good plain cook. She will be sold for cash or tobacco, or any person having a likely young negro girl, about 10 or 12 years old, fit for house service, may have her in exchange, the owner being in great want of such one. Enquire of the printers.

ANNAPOLIS: Printed by FREDERICK and SAMUEL GREEN, at the POST-OFFICE in Charles-Street.